IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2303 of 2006

EX RECT KRIPAL SINGH(S.N.13992608)
V/S
UNION OF INDIA & ORS.

Mr. SK NANDA, for the appellant / petitioner

Date of Order : 4.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

The petitioner by this petition seeks to challenge the orders, Annexure-5 and 8, whereby the petitioner's request for grant of disability pension has been declined, and that order has been upheld. It is interalia also claimed, that the arrears of pension be awarded with consequential benefits including interest @ 12% p.a.

The necessary facts in brief, as alleged in the writ petition are, that the petitioner was enrolled on 28.8.1995, and inducted for training as Ambulance Assistant in the Army Medical Corps, and was sent for training. It is alleged that at the time of enrollment he was thoroughly examined for physical and medical fitness, by the Military Medical Officers, and was found fit in all respects, in the Medical Category “AYE” i.e. fit for all types of duties in Army Forces, both in peace and war, in all parts of world. It is then alleged, that in the very first spell of

training the petitioner fell ill, and was admitted in Command Hospital, Lucknow on 6.9.1995, where he continued to remain as indoor patient, and was diagnosed as a case of Schizophrenia, and his medical category was lowered down to category "EEE", and was thus invalidated out on 1.2.1996, and was sent to home with two escorts. Discharge Slip has been produced as Annexure-1. According to the petitioner the disability was assessed at 60%, and in the Discharge Certificate it is clearly indicated, that he was invalidated out from service under the Army Service Rule Rule 13(3)(iv), due to Schizophrenia, and the papers were sent for disability pension claim. The Discharge Certificate has been produced as Annexure-2. However, in the meantime he was paid the amounts payable under the Army Group Insurance Scheme vide Annexure-4.

The petitioner has then alleged, that vide Annexure-5 dt. 15.2.1997, he was intimated, that his disability pension claim has been decided, and it was found, that the disability from which the petitioner suffered during the service in the Army, and on which his claim is based on; (a) is not attributable to Military Service, and (b) does not fulfill the condition viz. that it existed before and has remained aggravated. Thus, the petitioner was not found entitled to disability pension. Against this order he filed appeal, and the same has been rejected vide Annexure-8, dt. 17.12.1999. This appeal was

rejected on the ground, that the disability, on account of which the petitioner was discharged from service, is a Constitutional Disorder, and that, from perusal of the medical documents it was found, that there was no close time relationship with onset of illness and exposure to High Altitude Area/Field Service, and that, there was no other relevant service related stress in evidence. It was also found that it has been recorded by the medical authorities, that disability is neither attributable, to nor aggravated by duties of military service. The petitioner, however, thereafter again submitted yet another representation, after more than four years, i.e. 29.3.2004, contending that there has been no history of any such ailment in his genealogy, and hence it cannot be said to be a Constitutional Disorder, and therefore, requested to reconsider the matter. This representation was rejected, and the conclusion was communicated to the petitioner vide Annexure-9, pointing out passing of the orders Annexure-5 and 8. On these factual averments, the above reliefs have been claimed.

Arguing the writ petition, the first submission made was, that the writ petition is similar and identical in nature, to the writ petition no. 1983/2001, Ex. Sgt. Tejpal Singh Chauhan Vs. Union of India and ors., decided on 21.3.2004, and that decision had been upheld by the Division Bench in S.A.W. 1/2005. Then, arguing on merits,

the thrust of the argument was, that while at the time of enrollment, the petitioner was subjected to thorough medical examination, and was found fit, and that, he contracted the ailment while performing his duties, during training, and was admitted in the hospital, where he was diagnosed a case of Schizophrenia, it can, by no stretch of imagination be said, that invalidity is not attributable to, or aggravated by military service, and for this purpose much stress has been laid on para 7(b) of Appendix, appended to the Pension Regulations for the Army, 1961. It was contended, that since the petitioner was not suffering from any ailment at the time of enrollment, and no such note exists in the medical documents, about the petitioner suffering from any such ailment, nor that, for reasons the disease could not have been detected on medical examination prior to enrollment, and therefore, the only conclusion is, that the invalidity is to be concluded to be attributable to, or to have been aggravated by military service.

Learned counsel has reproduced Regulation 173 of Disability Pensionary Awards Rules, and has also reproduced Para 7(b) of the Appendix-II, in the writ petition.

I may, for ready reference, quote the said provisions of Regulation 173, and para 7(b), which read as under:-

"173. Unless otherwise specifically provided a

> disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over."
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> "7(b). A disease which has led to an individual discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service."

I have considered the submission, and have gone through the judgment in Tejpal Singh's case.

True it is, that the judgment in Tejpal Singh's case does fully support the contention of the petitioner, viz. that where there is no note put in the medical documents at the time of enrollment, either about existence of any ailment, nor reasons are given by the authorities, about not being able to detect the ailment on medical examination, prior to acceptance for service, the disability shall be deemed to have arisen during service, and shall be deemed to be attributable to or aggravated by military service. I may also note here, that this Tejpal Singh's case, so also yet another judgment of this Court, in Dariyav Singh Vs. Union of India, reported in 1997(3) WLC (Raj.)-693, were followed in Chatar Singh Vs. Union of India, reported in 2005 WLC (Raj.) UC-352. Likewise there are few more other judgments of this Court, including that

in, B.L. Swarankar Vs. Union of India, reported in 2005(9) RDD-3911 (Raj.), taking the identical view. I am mentioning about this judgment of B.L. Swarankar's case purposely, because in this judgment the judgment of Hon'ble the Supreme Court, in Union of India Vs. Baljit Singh, reported in (1996) 11 SCC-315, was considered, and distinguished. Be that as it may.

But then the law, in my view, is otherwise, as propounded by Hon'ble the Supreme Court, in the recent judgment, in Controller of Defence Accounts (Pension) & Ors. V/S S. Balachandran Nair, reported in AIR 2005 S.C. 4391, so also in Baljit Singh's case (supra).

In Baljit Singh's case the respondent was enrolled as Army Apprentice on 30.3.1975, and while in service, he sustained moderately severe injury in the right thigh, and right knee, and was admitted to Military Hospital, where he was downgraded to medical category “CEE”. Then, he was discharged. Then on 10.5.1981, the Medical Board found him physically incapacitated, and reported in Psychiatric OPD, where he was diagnosed to have a “Neurosis superimposed on an immature histrionic personality”, and was recommended to be invalidated out from service, and was discharged on 31.5.1981. Then, the incumbent filed the writ petition, whereupon the High Court directed the appellants to pay disability pension. Assailing that judgment, the matter

went to Hon'ble Supreme Court, and it was contended on behalf of the employee, that as per Medical report, the injury was sustained by him while he was in service, and that, therefore, it has to be presumed that it was during service, and accordingly must be attributable to military service, while the contention of the counsel for the Union of India was, that after examination of the respondent by the Board Members, it was reported, that the injury was not connected with the service, and as a result, he cannot be declared to have suffered injury, due to service. Hon'ble the Supreme Court accepted the contention of Union of India, and held, that various criteria have been prescribed in the guidelines, as to when the disease or injury is to be taken to be attributable to the military service. It was further held, that it is seen, that under Rule 173, disability pension would be computed, only when disability has occurred due to a wound, injury or disease, which is attributable to military service, or existed before, or arose during military service, and has been, and remains aggravated, during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. It was found to have been made amply clear from clauses (a) to (d) of para 7, which contemplates, that in respect of a disease, the Rules enumerated thereunder require to be observed. Clause (c) provides, that if a disease is accepted as having arisen in service, it must also be established, that the conditions

of military service determined, or contributed, to the onset of the disease, and that the conditions were, due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said, that the sustenance of injury, per se, is on account of military service, which, in view of the report of the Medical Board of doctors, it was not due to military service. It was further held, that the conclusion may not have been satisfactorily reached, that the injury, though sustained while in service, it was not on account of military service. It was categorically held, that in each case, when a disability pension is sought for, and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was, due to military service, or was aggravated, which contributed to invalidation for the military service.

Then, in S. Balachandran Nair's case, the respondent had joined Indian Army on 7.2.1972, had undergone a medical examination at the time of recruitment, and then he underwent training, and was posted. However, while working in the office of Radio Machine, he was admitted in the hospital on 10.8.1977. He was completely cured, then had some kidney complications, and the medical authorities found his illness as **'anxiety neurosis'**. He was again admitted in Military Hospital in December, 1979, and after prolonged treatment he was boarded out, and the

medical authorities were of the opinion, that he became unfit for continuing in service, and was finally discharged, w.e.f. 18.3.1980. The claim for disability pension was rejected, on the ground, that there was no proof; that the disability existed before, or developed during military service, and/or had aggravated thereby. The High Court held, that the respondent had been working in sensitive and turbulent areas, and this must have aggravated his disease, and the stress and strains of military service, were the sole cause of his illness, and it was directed, that disbursement of disability pension be made, which was affirmed by the Division Bench. Assailing this order, the matter was taken to Hon'ble the Supreme Court. It was contended, that there must be a causal connection, between disablement, or death, and military service, for attributability, or aggravation, to be conceded. Then, Hon'ble the Supreme Court referred to Regulation 423, which provided for attributability to service, and according to Clause (d) thereof, the question, whether a disability or death is attributable to, or aggravated by, service or not, will be decided, as regards its medical aspects, by a medical board, or by the medical officer, who signs the death certificate. The medical board/medical officer will specify reasons, for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability, or death, and the circumstances in which it

originated, will be regarded as final. The question, whether the cause and the attendant circumstances can be attributed to service, will however, be decided by the pension sanctioning authority. Then, Hon'ble the Supreme Court referred to Baljit Singh's case, so also yet another judgment of Hon'ble the Supreme Court, in Union of India Vs. Dhir Singh China, reported in 2003(2) SCC-382, wherein in para-7 it was found, that the Medical Board had found, that the two disabilities from which the respondent was suffering, were not attributable to, or aggravated by, military service. Clearly, therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53, to the case of the respondent. The diseases from which he was suffering were not found to be attributable to, or aggravated by, military service, and were in the nature of Constitutional Diseases, such being the opinion of the Medical Board, it was held, that the respondent can derive no benefit from Regulation 53. Following this judgment, it was held, that in the case before Hon'ble the Supreme Court, in view of the fact, that Medical Board's opinion was clearly to the effect, that illness suffered by the respondent was not attributable to military service, the High Court was not justified in their respective conclusions, and the respondent was held to be not entitled to disability pension.

In the present case, a look at Annexure-8 does

show, that the petitioner was appropriately medically examined by the competent medical board, and it was found, that the disability was on account of Constitutional Disorder. It was also found, that from perusal of medical documents, it was found that there was no close time relationship with onset of illness and exposure to High Altitude Area/Field Service, and that, there was no other relevant service related stress in evidence. In my view, when it is not challenged on the side of the petitioner, by contending that he was not examined by the competent medical board, or that the medical board did not examine properly, rather the contention is based, only, on presumption, required to be drawn, in view of the Division Bench judgment of in this Court, in Tejpal Singh's case, in that view of the matter, in my view, in view of the judgment of Hon'ble the Supreme Court, in Baljit Singh's case, and S. Balachandran Nair's case, the three judgments, being in B.L. Swarankar's case, Chatar Singh's case and Tejpal Singh's case, cannot be followed by me. The gravamen of these judgments is, that in those cases, when the incumbent was enrolled, and no note was made by the authorities, about incumbent being suffering from any disease, and the respondent failed to satisfy, as to why the Medical Board did not supply reasons, to hold that it was not possible to detect the aforesaid disease, at the time of enrollment in service, and therefore, presumption was drawn. As against this, it has clearly been ruled in

Baljit Singh's case, and S. Balachandran Nair's case, that the question, as to whether, the disability is attributable to, or aggravated by military service, is to be decided, taking into consideration the medical aspect, opined by the Board, and the opinion of the Medical Board, in this regard, shall be regarded as final, and that in each case, when a disability pension is sought for, and made a claim, it must be affirmatively established, as a fact, as to whether the injury sustained was, due to military service, or was aggravated, which contributed to invalidation for the military service.

Obviously, therefore, in view of the judgment in Baljit Singh's case and S. Balachandran Nair's case, no room can be left for any presumption, as drawn by the learned Single Judge, in Chatar Singh's case, and the Division Bench in B.L. Swarankar's case, so also in Tejpal Singh's case. Rather on the basis of the authorities of Hon'ble the Supreme Court in Baljit Singh's case and S. Balachandran Nair's case, in my view, the petitioner, cannot be said to have been wrongly refused the disability pension.

Thus, taken from any stand point, I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/